

Message Text

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ORIGIN OES-07

INFO OCT-01 NEA-10 ISO-00 ACDA-12 SS-15 L-03 SSO-00
CCO-00 MCE-00 EB-08 CIAE-00 INR-07 IO-13 NSAE-00
NRC-05 SOE-02 DODE-00 DOE-11 SP-02 NSCE-00 INRE-00
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DRAFTED BY OES/NET:LVNOSENZO:JW
APPROVED BY OES/NET:LVNOSENZO
ACDA:CVANDOREN
T/D:LSCHINMAN
T/D:DHAFFEMEISTER
NEA/INS:PLANDE
L/OES:RSLOAN
P /NPP:A OCKE
SS: FWISNER

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FM SECSTATE WASHDC
TO USDEL SECRETARY IMMEDIATE

S E C R E T STATE 310786 TOSEC 130055

FOR ATHERTON AND ANDERSON

E.O. 11652: GDS

TAGS: TECH, PARM, ENRG, IN

SUBJECT:PRESIDENTIAL WAIVER ON FULL SCOPE SAFEGUARDS
REF: SECTO 13010

1. FOLLOWING IS ADDITIONAL BRIEFING MATERIAL FOR PRESIDENT
AND PARTY ON NON-PROLIFERATION ISSUES WITH INDIA:

2. US OBJECTIVE

- TO INDICATE THAT A PRESIDENTIAL WAIVER FOR INDIA IS
UNLIKELY WITH REGARD TO THE PENDING LEGISLATION REQUIRE-
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MENT FOR FULL SCOPE SAFEGUARDS AS A FUTURE CONDITION FOR
US NUCLEAR EXPORTS.

INDIAN OBJECTIVE

- TO DETERMINE IF THERE IS ANY FLEXIBILITY IN THE US
POSITION ON THIS ISSUE WITH REGARD TO US SUPPLY OF
ENRICHED FUEL FOR THE TARAPUR REACTORS.

ESSENTIAL FACTORS

PENDING NON-PROLIFERATION LEGISLATION PROVIDES THAT 18 MONTHS (HOUSE VERSION) OR 24 MONTHS (SENATE VERSION) AFTER ENACTMENT, THE US WILL REQUIRE AS A CRITERION FOR ISSUANCE OF EXPORT LICENSES THAT RECIPIENTS WHO ARE NON-NUCLEAR WEAPON STATES MUST HAVE ALL THEIR NUCLEAR ACTIVITIES UNDER IAEA SAFEGUARDS. THE LEGISLATION PROVIDES FOR A PRESIDENTIAL WAIVER OF THIS REQUIREMENT IF ITS APPLICATION WOULD BE "SERIOUSLY PREJUDICIAL TO THE ACHIEVEMENT OF US NON-PROLIFERATION GOALS OR OTHERWISE JEOPARDIZE THE COMMON DEFENSE AND SECURITY..." THE BILLS ALSO PROVIDE FOR CONGRESSIONAL OVERRIDE OF A PRESIDENTIAL WAIVER BY CONCURRENT RESOLUTION.

THE INTENT OF THIS ASPECT OF THE LEGISLATION IS TO MOTIVATE NON-NUCLEAR WEAPON STATES WHO ARE US RECIPIENTS AND WHO HAVE UNSAFEGUARDED NUCLEAR FACILITIES, TO JOIN THE NPT OR IN LIEU OF THIS TO HAVE, AS A MINIMUM, ALL OF THEIR NUCLEAR ACTIVITIES UNDER IAEA SAFEGUARDS. THE CONGRESS HAD INDIA PARTICULARLY IN MIND IN THIS REGARD. THE CONCEPT OF A WAIVER, IN ANY EVENT, IS ONLY FOR THE MOST UNUSUAL CIRCUMSTANCE. IT WILL BE VERY DIFFICULT POLITICALLY AND POTENTIALLY VERY DAMAGING TO OVERALL US NON-PROLIFERATION EFFORTS TO CONSIDER USE OF THE WAIVER.

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FOREIGN SECRETARY MEHTA, DURING A PRESS CONFERENCE CONCERNING THE PRESIDENTIAL VISIT, IN COMMENTING ON NUCLEAR ISSUES AND PENDING US LEGISLATION, NOTED THAT IT "HAS SOME PROVISION FOR PRESIDENTIAL DISCRETION." THE NEW DELHI PRESS PICKED UP ON THIS STATEMENT TO ADD THAT THE IMPLICATION IS CLEAR THAT INDIA WOULD LIKE TO PROFIT FROM SUCH PRESIDENTIAL DISCRETION. WHILE WE HAVE MADE THE POINT BEFORE, WE NEED TO DISABUSE THE INDIAN GOVERNMENT OF ANY NOTION THAT A FUTURE PRESIDENTIAL WAIVER ON THE FULL SCOPE SAFEGUARDS ISSUE IS LIKELY WITH REGARD TO TARAPUR FUEL SUPPLY.

POINTS TO BE MADE

---A CENTRAL OBJECTIVE OF US NON-PROLIFERATION POLICY IS FOR ALL COUNTRIES TO HAVE AS A MINIMUM ALL THEIR PEACEFUL NUCLEAR ACTIVITIES UNDER INTERNATIONAL SAFEGUARDS. PENDING US LEGISLATION WOULD IN ANY EVENT MAKE THIS A REQUIREMENT FOR FURTHER US NUCLEAR COOPERATION AFTER 1-1/2 TO 2 YEARS.

---I URGE THAT INDIA PLACE ALL ITS NUCLEAR ACTIVITIES UNDER INTERNATIONAL SAFEGUARDS WHICH WOULD PROVIDE EVIDENCE OF INDIA'S COMMITMENT TO ENSURING THAT NUCLEAR ENERGY WILL BE USED FOR EXCLUSIVELY PEACEFUL PURPOSES.

---WHILE THE PENDING US LEGISLATION PERMITS A PRESIDENTIAL WAIVER OF THIS EXPORT CRITERION IF ITS APPLICATION WOULD BE SERIOUSLY PREJUDICIAL TO THE ACHIEVEMENT OF US NON-PROLIFERATION OBJECTIVES OR OTHERWISE JEOPARDIZE THE COMMON DEFENSE AND SECURITY, THIS WAIVER COULD BE OVERRIDDEN BY A CONCURRENT RESOLUTION OF CONGRESS.

---IN ANY EVENT, IT WOULD BE DIFFICULT TO EXERCISE A PRESIDENTIAL WAIVER ON SUCH A FUNDAMENTAL ELEMENT OF US
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NON-PROLIFERATION POLICY.

3. FOR BACKGROUND USE, TRANSMITTED BELOW IS TEXT OF SECTION OF SENATE VERSION OF NON-PROLIFERATION LEGISLATION WHICH SETS OUT EXPORT CRITERIA:

"SEC. 128. ADDITIONAL EXPORT CRITERION AND PROCEDURES.

"A. (1) AS A CONDITION OF CONTINUED UNITED STATES EXPORT OF SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, PRODUCTION OR UTILIZATION FACILITIES, AND ANY SENSITIVE NUCLEAR TECHNOLOGY TO NON-NUCLEAR-WEAPON STATES, NO SUCH EXPORT SHALL BE MADE UNLESS IAEA SAFEGUARDS ARE MAINTAINED WITH RESPECT TO ALL PEACEFUL NUCLEAR ACTIVITIES IN, UNDER THE JURISDICTION OF, OR CARRIED OUT UNDER THE CONTROL OF SUCH STATE AT THE TIME OF THE EXPORT.

"(2) THE PRESIDENT SHALL SEEK TO ACHIEVE ADHERENCE TO THE FOREIGN CRITERION BY RECIPIENT NON-NUCLEAR-WEAPON STATES.

"B. THE CRITERION SET FORTH IN SUBSECTION A. SHALL BE APPLIED AS AN EXPORT CRITERION WITH RESPECT TO ANY APPLICATION FOR THE EXPORT OF MATERIALS, FACILITIES, OR TECHNOLOGY SPECIFIED IN SUBSECTION A. WHICH IS FILED AFTER EIGHTEEN MONTHS FROM THE DATE OF ENACTMENT OF THIS SECTION, OR FOR ANY SUCH APPLICATION UNDER WHICH THE FIRST EXPORT WOULD OCCUR AT LEAST TWENTY-FOUR MONTHS AFTER THE DATE OF ENACTMENT OF THIS SECTION, EXCEPT AS PROVIDED IN THE FOLLOWING PARAGRAPHS:

-(1) IF THE COMMISSION OR THE DEPARTMENT OF ENERGY, AS THE CASE MAY BE, IS NOTIFIED THAT THE PRESIDENT HAS DETERMINED THAT FAILURE TO APPROVE AN EXPORT TO WHICH
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THIS SUBSECTION APPLIES BECAUSE SUCH CRITERION HAS NOT YET BEEN MET WOULD BE SERIOUSLY PREJUDICIAL TO THE ACHIEVEMENT OF UNITED STATES NON-PROLIFERATION OBJECTIVES OR OTHERWISE JEOPARDIZE THE COMMON DEFENSE AND SECURITY, THE LICENSE OR AUTHORIZATION MAY BE ISSUED SUBJECT TO OTHER APPLICABLE REQUIREMENTS OF LAW: PROVIDED, THAT NO SUCH EXPORT OF ANY PRODUCTION OR UTILIZATION FACILITY OR OF ANY SOURCE OR SPECIAL NUCLEAR MATERIAL (INTENDED FOR USE AS FUEL IN ANY PRODUCTION OR UTILIZATION FACILITY) WHICH HAS BEEN LICENSED OR AUTHORIZED PURSUANT TO THIS SUBSECTION SHALL BE MADE UNTIL THE FIRST SUCH LICENSE OR AUTHORIZATION WITH RESPECT TO EACH NON-NUCLEAR-WEAPON STATE WHICH HAS FAILED TO MEET SUCH CRITERION IS SUBMITTED TO THE CONGRESS (TOGETHER WITH A DETAILED ASSESSMENT OF THE REASONS UNDERLYING THE PRESIDENT'S DETERMINATION, THE JUDGMENT OF THE EXECUTIVE BRANCH REQUIRED UNDER SECTION 126 OF THIS ACT, AND ANY COMMISSION OPINION AND VIEWS) FOR A PERIOD OF SIXTY DAYS OF CONTINUOUS SESSION (AS DEFINED IN SUBSECTION 130(G) OF THIS ACT) AND REFERRED TO THE COMMITTEE ON INTERNATIONAL RELATIONS OF THE HOUSE OF REPRESENTATIVES AND THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE, BUT SUCH EXPORT SHALL NOT OCCUR IF DURING SUCH SIXTY-DAY PERIOD THE CONGRESS ADOPTS A CONCURRENT RESOLUTION STATING IN SUBSTANCE THAT THE CONGRESS DOES NOT FAVOR THE PROPOSED EXPORT. ANY SUCH LICENSE OR AUTHORIZATION SHALL BE CONSIDERED PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 130 OF THIS ACT FOR THE CONSIDERATION OF PRESIDENTIAL SUBMISSIONS.

"(2) IF THE CONGRESS ADOPTS A RESOLUTION OF DISAPPROVAL PURSUANT TO PARAGRAPH (1), NO FURTHER EXPORT OF MATERIALS, FACILITIES, OR TECHNOLOGY SPECIFIED IN SUBSECTION A. SHALL BE PERMITTED FOR THE REMAINDER OF THAT CONGRESS, UNLESS SUCH STATE MEETS THE CRITERION OR THE PRESIDENT NOTIFIES THE CONGRESS THAT HE HAS DETERMINED THAT SIGNIFICANT PROGRESS HAS BEEN MADE IN ACHIEVING
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ADHERENCE TO SUCH CRITERION BY SUCH STATE OR THAT UNITED STATES FOREIGN POLICY INTERESTS DICTATE RECONSIDERATION AND THE CONGRESS, PURSUANT TO THE PROCEDURE OF PARAGRAPH (1), DOES NOT ADOPT A CONCURRENT RESOLUTION STATING IN SUBSTANCE THAT IT DISAGREES WITH THE PRESIDENT'S DETERMINATION.

"(3) IF THE CONGRESS DOES NOT ADOPT A RESOLUTION OF DISAPPROVAL WITH RESPECT TO A LICENSE OR AUTHORIZATION SUBMITTED PURSUANT TO PARAGRAPH (1), THE CRITERION SET FORTH IN SUBSECTION A. SHALL NOT BE APPLIED AS AN EXPORT CRITERION WITH RESPECT TO EXPORTS OF MATERIALS, FACILITIES AND TECHNOLOGY SPECIFIED IN SUBSECTION A. TO THAT STATE: PROVIDED, THAT THE FIRST LICENSE OR AUTHORIZATION WITH RESPECT TO THAT STATE WHICH IS ISSUED PURSUANT TO THIS PARAGRAPH AFTER TWELVE MONTHS FROM THE ELAPSE OF THE SIXTY-DAY PERIOD SPECIFIED IN PARAGRAPH (1), AND THE FIRST SUCH LICENSE OR AUTHORIZATION WHICH IS ISSUED AFTER EACH TWELVE-MONTH PERIOD THEREAFTER, SHALL BE SUBMITTED TO THE CONGRESS FOR REVIEW PURSUANT TO THE PROCEDURES SPECIFIED IN PARAGRAPH (1); PROVIDED FURTHER, THAT IF THE CONGRESS ADOPTS A RESOLUTION OF DISAPPROVAL DURING ANY REVIEW PERIOD PROVIDED FOR BY THIS PARAGRAPH, THE PROVISIONS OF PARAGRAPH (2) SHALL APPLY WITH RESPECT TO FURTHER EXPORTS TO SUCH STATE." CHRISTOPHER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NUCLEAR PROLIFERATION, BRIEFING MATERIALS
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE310786
Document Source: CORE
Document Unique ID: 00
Drafter: LVNOSENZO:JW
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780003-0771
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Litigation History:
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Office: ORIGIN OES
Original Classification: SECRET
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: n/a
Reference: 77 SECTO 13010
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 13-Oct-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 134697
Secure: OPEN
Status: NATIVE
Subject: PRESIDENTIAL WAIVER ON FULL SCOPE SAFEGUARDS
TAGS: TECH, PARM, ENRG, OVIP, US, IN, (CARTER, JIMMY)
To: SECRETARY
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/fc780efd-c188-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009